ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Fuentes	Analyst:	John Pavalasky	Bill Number:	AB 1069
Related Bills:	See Legislative History	Telephone:	845-4335	Introduced Date:	February 18, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: California Motion Picture Credit/California Film Commission Extend The Allocation Of Credits Until July 1, 2019, & Extend Limit On Aggregate Amount Of Credits Allocated Through The 2018–19 Fiscal Year

SUMMARY

This bill would extend, for five additional years, until July 1, 2019, the California Motion Picture Credit.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Suggested Amendments

Technical amendments are necessary and are provided.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill, in seeking a five year extension to the existing law, acknowledges that the California Film & Television Tax Credit Program has been successful in its goal to retain and increase film and television production occurring in California.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment. Thus, upon enactment, the California Film Commission (CFC) would be able to accept applications for credit allocations in fiscal years 2014/2015 and each fiscal year thereafter, through and including the 2018/2019 fiscal year.

Board Position:			Executive Officer	Date
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ANALYSIS

FEDERAL/STATE LAW

Current Federal Law

Depreciation & Expensing

The cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation. In lieu of capitalizing the cost and recovering it through depreciation, taxpayers may elect to deduct up to $15 million ($20 million if the production expenses are incurred in certain distressed areas) of the cost of any qualifying film and television production, commencing prior to January 1, 2012, in the year the expenditure is incurred.

Domestic Production Activities Deduction

Qualified film productions are eligible for the domestic production activities deduction. This provision allows a 9 percent deduction (when fully phased in) of so-called "qualifying production activities income (QPAI)." The deduction is phased in at 3 percent in 2005 and 2006, 6 percent in 2007 through 2009, and 9 percent in 2010 and thereafter.

- With respect to film productions, QAPI refers to the net income from the license, sale, exchange, or other disposition of any "qualified film" produced by the taxpayer.
- The deduction is limited for a taxable year to 50 percent of the W-2 wages paid by the taxpayer with respect to domestic production activities during such taxable year.
- The law contains special rules in determining the W-2 wage limit for non-corporate business entities, like partnerships and S corporations
- The deduction is generally allowed for purposes of the Alternative Minimum Tax (AMT).

Definition of Qualified Film. The deduction is available for any motion picture film or video tape (but not sexually explicit films as defined in 18 U.S. Code Section 2257), including television programming, if at least 50 percent of the total production compensation constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.

Credit

Federal law does not allow any credit for motion picture productions.

Current California Law

Depreciation & Expensing

California conforms to the use of the income forecast method of depreciation for the recovery of costs of motion picture films, sound recordings, copyrights, books, and patents, with modifications. However California does not conform to the federal expensing provision for film and television production.

Domestic Production Activities Deduction

California does not conform to the federal domestic production activities deduction.

California Film & Television Tax Credit

The tax credit to a qualified taxpayer, as defined, is for 20 percent of qualified expenditures, as defined, attributable to the production of a qualified motion picture, as defined, and 25 percent of qualified expenditures, as defined, attributable to the production of a qualified motion picture where the motion picture is a television series relocated to California or an independent film, as defined, in California.

This credit is allocated in the fiscal year that the production begins and is certified by the CFC after the production is completed.

A qualified taxpayer may, in lieu of claiming the credit allowed by this provision, make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer.

Allocation

The aggregate amount of credits that may be allocated by the CFC in any fiscal year is equal to the following:

- $100,000,000 in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through and including the 2013/2014 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

Credit Certificate

Tax credits are allowed for taxable years beginning on or after January 1, 2011, in which the CFC issues a credit certificate.

In accordance with rules and regulations promulgated by the CFC, qualified taxpayers must comply with audit requirements prior to the issuance by CFC of the credit certificate. The credit is disallowed if the taxpayer fails to provide the copyright registration number required by the CFC and until this requirement is met.

Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability can be taken over a period of six taxable years or until the credit is exhausted, whichever occurs first. In the case where the credit allowed exceeds the taxpayer's tax liability, a qualified corporate taxpayer may elect to assign any portion of the credit allowed to one or more affiliated corporations for each taxable year in which the credit is allowed.

For credits attributable to an independent film, the qualified taxpayer is permitted to sell a credit to an unrelated party. The unrelated party is subject to the same requirements as the qualified taxpayer. The qualified taxpayer is required to report to FTB prior to the sale of the credit all required information in the form and manner specified by FTB. Credits may not be sold to more than one taxpayer nor may the credit be resold by the purchaser to another party. In the event that both the taxpayer originally allocated a credit by the CFC and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, FTB may disallow the credit of either taxpayer, as long as the statute of limitations upon assessment remains open. FTB is authorized to prescribe rules, standards, procedures, and the like to implement this aspect of the provisions. The Administrative Procedures Act requirements regarding regulations do not apply.

Annually, the CFC is required to provide the FTB with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the CFC.

THIS BILL

This bill would extend the CFC's requirement to allocate the tax credits five additional years, until July 1, 2019. This bill would also extend the limit on the aggregate amount of credits that may be allocated through the 2018–19 fiscal year.

TECHNICAL CONSIDERATIONS

Technical amendments are included to ensure that credits assigned to or sold to an unrelated taxpayer are able to be claimed by that taxpayer as a "qualified taxpayer." A technical amendment is also made to clarify the override of the normal limitation on credits of a disregarded entity to allow that entity to sell the credit to an unrelated taxpayer and have the purchasing taxpayer be able to claim the credit.

LEGISLATIVE HISTORY

SBX3 15 (Calderon) (Stats. 2009, Ch. 09X3-17) enacted the California Motion Picture Credit.

OTHER STATES' INFORMATION

The states surveyed included Florida, Louisiana, Michigan, New Jersey, New Mexico, New York, as well as the province of British Columbia, Canada.

Florida (FL): The **FL Film & Entertainment Industry Financial Incentive Program** is a 20 – 30 percent transferable tax credit. The funding allocated to the program is $242 million over five years (through 2014). The priority for qualifying/certifying projects for tax credit awards is determined on a first-come, first-served basis.

Louisiana (LA): The **LA Production Incentive** offers a 30 percent transferable tax credit incentive for total in-state expenditures related to the production of a motion picture. An additional five percent labor tax credit incentive can be earned on the payroll of LA residents that are employed by a state certified motion picture production. The tax credit incentives are fully transferable and LA has no limit to the amount of tax credit incentives that can be earned by a single production.

Only money spent on production costs within the borders of the state of LA qualify for the 30 percent tax credit incentive. That includes all services that are performed in LA from residents and non-residents alike. Additionally, an option to transfer tax credit incentives to the state for eighty five cents (.85) on the dollar is allowed, and LA will send a check immediately.

Michigan (MICH): The **MICH Media Production Credit** offsets, or subsidizes, a percentage of a film's actual production costs. For direct production expenses, the taxpayer receives a 42 percent credit for expenditures made in a "core community," as defined, and a 40 percent credit for expenditures made elsewhere. Under the credit, the taxpayer also receives a 30 percent credit for qualified personnel expenditures. Qualified personnel expenditures are limited to $2 million per individual, must be subject to taxation in the State, and are made to a crew member, as defined, who has not been a Michigan resident for at least 60 days (i.e. is a nonresident). The credit can be transferred and is refundable. The **MICH Media Infrastructure Credit** offsets, or subsidizes, 25 percent of investment expenditures in a production or postproduction facility located in Michigan. Expenses on both the structure, as well as movable and immovable property related to the facility, are eligible. The facility does not need to be exclusively used for eligible activities, but the investment must total at least $250,000 to be eligible for the credit. Credits are not capped for any individual taxpayer, but the total of all credits that may be awarded is capped at $20.0 million per calendar year. The tax credit is not refundable, but may be transferred and/or carried forward for up to 10 years. The **MICH Media Job Training Credit** offsets, or subsidizes, 50 percent of qualified job training expenditures. Expenses must be to provide on-the-job training for certain crew members who have been residents of Michigan for at least 12 months and who demonstrate "sufficient prior experience or training" in the film and digital media industry. The credit is not limited, but is not refundable or transferable. Excess credit amounts may be carried forward for 10 years. The **MICH Individual Income Tax Media Credit** is essentially the same as the MICH Media Production Credit. However, the credit applies against withholding payments made by the production company on wages subject to withholding. Portions of the MICH Media Production Credit claimed under the MICH Individual Income Tax Media Credit cannot also be counted under the Michigan Business Tax portion of the MICH Media Production Credit. The MICH Individual Income Tax Media Credit is limited to the liability of the taxpayer and is not refundable, transferable, or subject to a carry forward. The **MICH MEGA (Michigan Economic Growth Authority) Film Credit** allows a film and digital media production company to qualify as an "eligible business" for the purpose of receiving Michigan Business Tax credits under the MEGA Act, especially those provisions regarding "high technology activities". Eligible productions are limited in a manner similar to the MICH Media Production Credit. The MEGA Act allows credits for contributions from one firm to another that meet certain criteria and for a variety of multiyear credit awards to reduce or eliminate the liability of a taxpayer for up to 20 years. The MEGA credit provisions include credits for the tax rate times various amounts, including up to 100 percent of payroll and health care benefits. The credits are refundable.

New Jersey (NJ): The **NJ Film Tax Credit** allows a production company to get 20 percent of its qualified film production expenses back in the form of a tax credit, which can be used to offset NJ state corporate business tax. In order to qualify, 60 percent of the production company’s total production expenses, excluding postproduction costs, must be incurred in NJ. If the production company earning the tax credit cannot use it, the tax credit may be sold to another eligible NJ taxpayer. The tax credit applies to tax periods beginning on and after July 1, 2005 and is set to sunset in 2015. **NJ Exemption From Sales Tax** - Certain tangible property used directly and primarily in the production of films and television programs is exempt from New Jersey's seven percent sales tax.

This tangible property includes the purchase of replacement parts for machinery, tools and other supplies, the purchase of lumber and hardware to build sets, the rental of picture cars, the purchase or rental of other types of props, and costs related to the repair of camera and lighting equipment

New Mexico (NM): The **NM Film Production Tax Rebate** is a fully refundable 25 percent tax credit on all production expenditures (including NM labor) that are subject to taxation by NM. Non-resident actors and stunt performers will also qualify under a separate tax structure.

New York (NY): The **NY State Film Production Credit** is a fully refundable 30 percent tax credit on qualified costs incurred in New York State. NY legislation enacted in August 2010 created an additional pool of funding ("Pool 2") for the NY State Film Production tax credit program. The new funding allocated to the program is $420 million per year for calendar years 2010-2014 inclusive. Up to $7 million per year of this total amount will be available to the newly created, separately administered **NY State Post Production Credit**.

British Columbia (BC): The **BC Basic Production Services Tax Credit** is equal to 33 percent of a corporation's accredited qualified BC labor expenditure for the tax year. An additional six percent of a corporation's accredited qualified BC labor expenditure for the tax year is allowed for each of the following: **Regional Production Services Tax Credit** – Prorated by the number of days the principal photography of the production is done in BC outside the Vancouver area, over the total number of days in which principal photography is done in BC; **Distant Location Production Services Tax Credit** – Prorated by the number of days of principal photography done in a distant location in BC, over the total number of days in which principal photography is done in BC. In addition, the **Digital Animation or Visual Effects (DAVE) Production Services Tax Credit** of 17.5 percent of the accredited qualified BC labor expenditure directly attributable to prescribed DAVE activities. Thus, up to a total credit of 62.5 percent of the accredited qualified BC labor expenditure is available.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1069 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011 ($ in Millions)				
2011-12	2012-13	2013-14	2014-15	2015-16
$0	$0	-$11	-$49	-$83

The table does not show revenue losses for later fiscal years, which are estimated to total -$357 million. This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support:
American Federation of Television and Radio Artists
California Labor Federation
California Teamsters Public Affairs Council
Directors Guild of America
Film Musicians Secondary Markets Fund
IATSE Local 44 - Affiliated Property Craftpersons
IATSE Local 80 - Motion Picture Studio Grips/Crafts Service
IATSE Local 600 - International Cinematographers Guild
IATSE Local 683 - Laboratory Film/Video Technicians, and Cinetechnicians
IATSE Local 695 - Sound Technicians, Television Engineers, Video Assist Technicians, and Studio Projectionists
IATSE Local 700 - Motion Picture Editors Guild
IATSE Local 705 - Motion Picture Costumers
IATSE Local 706 - Make Up Artists & Hair Stylists Guild
IATSE Local 728 - Motion Picture Studio Electrical Lighting Technicians
IATSE Local 729- Motion Picture Set Painters and Sign Writers
IATSE Local 767 - Motion Picture Studio First Aid Employees
IATSE Local 800 - Art Directors Guild and Scenic, Title, and Graphic Artists
IATSE Local 844 - Motion Picture Studio Teachers and Welfare Workers
IATSE Local 871 - Script Supervisors/Continuity, Accountants and Allied Production Specialists Guild
IATSE Local 892 - Costume Designers Guild
International Brotherhood of Teamsters, Local 399
Motion Picture Association of America
Professional Musicians - Local 47
Recording Musicians Association
Screen Actors Guild
Unite Here

Opposition: None at this time

ARGUMENTS

Pro: Proponents argue that although the California tax credit is not as generous as that of other states, it has the ability to keep production in California because of the various other benefits connected with filming in California.

Con: Opponents may say that with the state's current fiscal crisis, additional tax expenditures should be avoided.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1069

AMENDMENT 1

On page 16, line 16, after the word "party." insert a new sentence:

Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this subdivision.

AMENDMENT 2

On page 17, after line 7, insert:

(9) For purposes of this subdivision, the unrelated party or parties that purchase a credit under paragraph (1) shall be treated as a "qualified taxpayer" under paragraph (1) of subdivision (a).

AMENDMENT 3

On page 35, line 22, after the word "party." insert a new sentence:

Subdivision (i) of Section 23036 shall not apply to any credit sold pursuant to this subdivision.

AMENDMENT 4

On page 36, after line 14, insert:

(10) For purposes of this subdivision:

(A) The affiliated corporation or corporations that are assigned a credit under paragraph (1) shall be treated as a "qualified taxpayer" under paragraph (1) of subdivision (a).

(B) The unrelated party or parties that purchase a credit under paragraph (3) shall be treated as a "qualified taxpayer" under paragraph (1) of subdivision (a).